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OUR FILE NUMBER

294,500-005
DC1-276981.V1

VIA SAME-DAY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEB 28 1997

*Federal Communications Commission
Office of Secretary*

Re: Comments of The Game Show Network, L.P. in
MM Docket No. 95-176

Dear Mr. Caton:

On behalf of The Game Show Network, L.P. ("GSN"), and in accord with 47 C.F.R. § 1.419, enclosed for filing with the Commission are an original and eleven copies, which include copies for each Commissioner, of the Comments of GSN in response to the Commission's Notice of Proposed Rulemaking in the Matter of Closed Captioning and Video Description of Video Programming, in the above-referenced docket. Also enclosed is a disk containing GSN's Comments in Word Perfect 5.1 format.

An additional copy of the Comments is enclosed to be date-stamped. Please return the date-stamped copy to the courier for delivery to the undersigned.

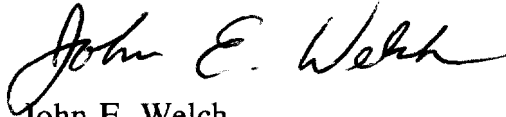
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Any questions regarding this filing should be referred to the undersigned.
We very much appreciate your assistance in processing this filing.

Respectfully submitted,

A handwritten signature in cursive script, reading "John E. Welch".

John E. Welch
Jessica Davidson Miller

Counsel to The Game Show Network, L.P.

Enclosures

cc: Kim Cunningham, Esq.
Game Show Network

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FEB 28 1997

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	MM Docket No. 95-176
Closed Captioning and Video)	
Description of Video)	
Programming)	
_____)	

COMMENTS OF THE GAME SHOW NETWORK, L.P.

John E. Welch
Jessica Davidson Miller

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555 13th Street, N.W.
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Counsel for The Game Show Network, L.P.

Dated: February 28, 1997

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	MM Docket No. 95-176
Closed Captioning and Video)	
Description of Video)	
Programming)	
)	

To: The Commission

SUMMARY OF COMMENTS OF THE GAME SHOW NETWORK, L.P.

The Game Show Network ("GSN") is a programming service that offers a wide variety of popular game shows. GSN is carried on cable systems, DBS and other multi-channel video providers. GSN is committed to increasing access to television programming for persons with hearing disabilities. However, GSN is concerned about two aspects of the Commission's proposed rules that could have a devastating impact on its operations. First, GSN would incur huge financial costs if it were retroactively required to caption its main asset -- a library of approximately 50,000 previously aired television game show programs, dating back to the 1950s. Second, GSN believes that it would not be feasible to caption its new live, interactive game shows, which utilize the television screen as a game board and require viewers/players who participate from home to respond within three to four seconds from the time the host asks a trivia question.

In order to address these concerns, GSN hereby requests first, that the Commission not establish a specific percentage or date for captioning library collections.

Alternatively, if the Commission does adopt such fixed standards, it should set the threshold at 25 percent of programming over 16 years, and exempt programmers that rely on library programming for more than 50 percent of their programming schedules. Moreover, any final standard should be measured on a system-wide basis. Second, with regard to the captioning of new programming, GSN urges the Commission to exempt interactive game shows that make use of a substantially full-screen virtual environment or comparable game board or require viewer/player speed in order to participate. Third, GSN requests that the Commission consider program format and the complexity of closed captioning a particular program in determining whether to grant "undue burden" exemptions to particular petitioners under its regulations.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	MM Docket No. 95-176
Closed Captioning and Video)	
Description of Video)	
Programming)	
)	

To: The Commission

COMMENTS OF THE GAME SHOW NETWORK, L.P.

The Game Show Network, L.P. ("GSN"), by its counsel, submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

BACKGROUND

GSN, a Sony Pictures Entertainment company, owns and operates the advertiser-supported Game Show Network, a 24-hour programming service that offers a wide variety of popular game shows. GSN is carried on cable systems, DBS and other multi-channel video providers. GSN's family-oriented programming spans five decades of television history, from classic shows such as "What's My Line," "To Tell the Truth" and "Beat the Clock" to more recent shows such as "Jeopardy." GSN also broadcasts original, interactive game shows, such as "Trivia Track," "Race for the Numbers" and "Decades," and expects to add more interactive game shows to its programming over time. Currently, more than 90 percent of GSN's programming comes from its library collection. GSN plans to introduce several new shows in the next year that will

somewhat reduce its reliance on its library collection. Still, library programming will continue to account for the vast majority of GSN's programs.¹

ARGUMENT

I. The Commission's Proposal For Captioning Library Collections Would Impose A Crippling Financial Burden On GSN.

Section 713(b)(2) of the Telecommunications Act of 1996 (the "Act") requires the Commission to adopt rules that would "maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations, except as provided in subsection (d)."² Subsection (d) states that "the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome."³

Two legislative directives are immediately clear from this statutory language: First, Congress differentiated between new programs and previously aired programs by requiring that new programs be made "fully accessible" to the hearing impaired, while only requiring programmers to "maximize the accessibility" of previously aired programming. Thus, as the Commission recognized in the NPRM, both the

¹ For example, GSN's typical programming day might consist of 21.5 hours of library programming, 2 hours of original interactive game shows, and 0.5 hours of other, original non-interactive programming.

² See Telecommunications Act of 1996, Pub. L. No. 104-104, § 713, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613 (1996)) (emphasis added).

³ Id. (emphasis added).

language of the statute and the legislative history reflect Congress' intent that not all library programs be captioned.⁴ Second, Congress acknowledged that even the lower ("maximize") standard for captioning previously aired programming might be too economically burdensome in certain situations, and thus authorized the Commission in such a case to exempt certain programs from its rules.

GSN and other cable programmers that depend heavily on previously aired programs could face staggering financial consequences of the kind Congress clearly intended to avoid if the Commission ultimately requires a large percentage of library programming to be captioned. GSN's principal asset is its library of approximately 50,000 previously broadcast game show episodes.⁵ These programs span several decades, and less than five percent are closed captioned at present. GSN estimates that it would cost approximately \$500 to caption each of those programs. If the Commission were to implement a threshold of 75 percent, as suggested in the NPRM,⁶ GSN would thus be forced to invest approximately \$18 million to bring its collection into compliance. Such a burden would not only jeopardize the very viability of GSN, but would also create an incentive for GSN to include in its programming only a small percentage of its

⁴ In the Matter of Closed Captioning and Video Description of Video Programming, FCC Rel. No. 97-4, MM Docket No. 95-176 (released Jan. 17, 1997) ("NPRM") at ¶ 57 (citing the House Report for the proposition that "economic or logistical difficulties make it unrealistic to caption all previously produced programming").

⁵ GSN licenses these game shows from both affiliated and non-affiliated entities.

⁶ See NPRM at ¶ 6.

collection, thus wasting many of its resources and undermining the Commission's overarching goal of programming diversity.

As explained further below, GSN thus urges the Commission to fulfill its mandate from Congress by promoting closed captioning without threatening the viability of programmers that rely heavily on library programming.

A. The Commission Should Not Establish A Specific Percentage Or Date For Captioning Library Collections.

Although GSN is committed to improving television access for the hearing impaired to the maximum extent feasible, GSN urges the Commission to implement a good faith approach for programmers to caption their library collections, instead of imposing an arbitrary percentage and date by which such captioning must be completed. As the Commission itself recognized in the NPRM, requiring programmers to caption a large amount of library programming would impose a significant burden on the owners and providers of previously broadcast programming.⁷ In addition, requiring programmers to caption a certain percentage of their library collections could encourage providers "to remove older, uncaptioned programming from their scheduled offerings rather than captioning such programs."⁸ If cable and DBS providers respond to the Commission's regulations by avoiding older, uncaptioned programming, networks such as GSN that have paid vast amounts of money to amass high-quality library collections would suddenly find themselves universally spurned by video services providers.

⁷ Id. at 58.

⁸ Id.

Furthermore, such a response would also harm television viewers, who would thus be denied vintage, critically acclaimed (but non-captioned) programming. These and other concerns were behind the comments filed by CBS, NBC, HBO, the National Association of Broadcasters, the National Cable Television Association and the Motion Picture Association of America in the Notice of Inquiry proceeding, which all urged the Commission not to impose mandatory captioning requirements for library collections by a date certain.⁹

GSN believes that a good faith approach to captioning of library programs, monitored by a periodic reporting system, would be a successful means of "maximiz[ing]" access to library programs for the hearing impaired. Television programmers have already demonstrated their dedication to improving television access by dramatically increasing the number of closed-captioned new and previously broadcast shows, in the absence of any regulation.¹⁰ As more and more original programming is being closed captioned (particularly under the Commission's proposed eight-year deadline for full accessibility), the percentage of television programming that is inaccessible to the hearing impaired will continue to drop precipitously. Accordingly, GSN would urge the Commission not to establish specific targets, but rather to require program providers to make a good faith effort to continue increasing access and to submit periodic reports (perhaps every five years) on their progress. Under this approach, the Commission could

⁹ Id. at 52-53.

¹⁰ As the Commission notes, some commenters in the Notice of Inquiry proceeding asserted that because captioning of previously published programming is already increasing without strict regulation, numerical targets are simply not necessary to meet the requirements of the Act. Id. at ¶¶ 52-53.

monitor progress and impose specific targets at a later date if these reports did not demonstrate a steady increase in the amount of library programming that is being made accessible to the hearing impaired.

B. If The Commission Does Establish A Specific Numerical Standard For Captioning Library Collections, It Should Be Set At 25 Percent Over The Next Sixteen Years.

If the Commission does determine that it will require a certain percentage of library programming to be captioned, GSN requests first, that the percentage be significantly lower than 75 percent (perhaps 25 percent), and second, that the Commission impose a 16-year time limit for achievement of that goal. As the Commission itself states in the NPRM, "it [is] inappropriate to mandate captioning of nearly all library programming," because of the heavy burden of such a regulation and the likely shrinkage that would result in the body of programming available to viewers.¹¹ Moreover, the Commission states that even if it does establish a minimum percentage for captioning library programs, it does not "believe immediate or near term captioning of library programming is appropriate," because of the "significant burden" on owners and providers.¹² With this guidance in mind, GSN proposes a threshold for library programming of 25 percent, achieved over the next 16 years. Again, these parameters would "maximize" access for the hearing impaired without threatening the viability of programmers that feature significant amounts of previously broadcast programming.

¹¹ See id. at ¶ 58.

¹² Id. at ¶ 58 (emphasis added).

C. Compliance With Any Numerical Threshold Set By The Commission Should Be Measured Over An Entire Video Provider System And Not Channel By Channel.

In the NPRM, the Commission states that it proposes "to apply the percentages of programming that must be captioned on a system-wide basis."¹³ GSN strongly supports this approach both with regard to the staggered targets the Commission proposes for captioning new programming, and with regard to library programming as well. Imposing any numerical threshold on a system-wide basis, instead of channel by channel, or tier by tier, would allow a cable system, for example, to carry a start-up network like GSN (with a large collection of non-captioned library programming), as long as it carried a sufficient number of other, perhaps more established programmers, that were completely captioned.¹⁴ GSN also supports measuring any percentage requirement on a monthly basis, rather than a weekly basis, because of programming changes or irregularities that might disrupt a provider's programming schedule. Importantly, a system-wide approach would help minimize the possibly devastating effect of the Commission's regulations on newer and smaller programmers, while "maximiz[ing]" access to television for the hearing impaired.

¹³ See id. at ¶ 43.

¹⁴ Id.

D. If The Commission Does Require That A Certain Percentage of Library Programming Be Captioned, It Should Exempt Programming Networks That Rely On Pre-Aired Programming For More Than Half Of Their Schedules.

Under Section 713(d) of the Act, the Commission "may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming."¹⁵ GSN proposes that the Commission use this authority to exempt from its library programming regulations all programming services whose schedules consist primarily (i.e., more than 50 percent)¹⁶ of pre-aired programming. Such an exemption would be appropriate under the Act because captioning such a large amount of pre-aired programming would impose unreasonable expenses on these programmers. As discussed above, GSN could face approximately \$18 million in costs if it were required to caption 75 percent of its library collection. Certainly, Congress did not intend to impose that kind of devastating financial cost on independent, start-up networks that have already purchased licensing rights to previously broadcast programs at a huge cost (with no expectation of incurring captioning costs in the future) and are now depending on those programs for their survival. Exempting programmers that depend primarily on previously broadcast programming would thus be appropriate under the statutory scheme established by Congress.

¹⁵ See Telecommunications Act of 1996 at § 713(d).

¹⁶ GSN proposes that this requirement be measured on a monthly basis.

II. The Commission's Closed Captioning Rules Should Exempt Interactive And Virtual Environment Game Show Programs.

GSN is also concerned about the impact of the Commission's proposed rules on its live, interactive game show programs. First, these virtual environment games require the display of various game components that fill up most, or all, of the television screen. For example, on GSN's "Trivia Track" game show, the screen includes a race track at the top of the screen with five horses, a game board for the five players who participate by telephone, a telephone dial pad that displays possible answer choices, a clock that times the participants, and in the lower right-hand corner, a host who asks the trivia questions. It would be impossible to caption this show without blocking one or more of the game's critical components. Second, these games are transmitted live, and the players (who participate by telephone) have only three to four seconds to punch in their answers to the trivia questions. Because real time captioning results in a delay of about three seconds after the corresponding audio segment,¹⁷ a viewer would not be able to participate in a game via closed captioning. While GSN supports "maximiz[ing]" television access for the hearing impaired, it believes that these interactive games (which comprise only an minuscule percentage of television offerings in this country) are simply unsuited for closed captioning. Accordingly, GSN requests that the Commission exempt from its regulations interactive game shows that utilize a substantially full-screen virtual environment or comparable game board or require viewer/player speed in order to participate.

¹⁷ NPRM at ¶ 20.

III. The Commission Should Consider Program Format And The Complexity Of Closed Captioning A Particular Show In Determining Whether To Grant Exemption Petitions.

Section 713(d)(3) of the Act allows the Commission to grant individual exemptions from its closed captioning requirements to programmers who demonstrate that application of these requirements would result in an "undue burden." While the Act does list some criteria that should be included in determining what constitutes an "undue burden," the Commission invites comment on other factors that should be considered in granting such exemptions.¹⁸ Accordingly, GSN urges the Commission to consider program format and the complexity of captioning a particular program as part of the "undue burden" equation. As discussed infra, GSN is concerned that several of its programs are inherently unsuited for closed captioning. Adopting these criteria would allow the Commission to consider such problems in determining when to grant exemptions from its regulations.¹⁹

CONCLUSION

GSN is committed to fulfilling its public service obligations and increasing the amount of its programming available to the hearing impaired. However, GSN believes that access for the hearing impaired should not be achieved at the expense of

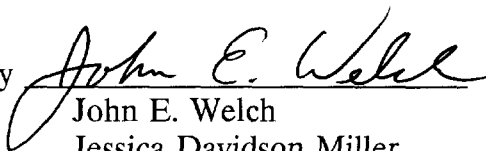
¹⁸ Id. at ¶ 91.

¹⁹ Even though GSN urges the Commission to adopt these criteria, it believes that its interactive shows should be categorically exempted, as argued in Section II infra, because of the strong merits of its argument for exemption and the administrative inefficiency that would result from requiring case-by-case exemption petitions for each of its virtual environment or high-speed games.

start-up networks whose primary assets are large libraries of previously broadcast programs (that were purchased at great expense and without any expectation of future captioning costs). Accordingly, GSN would first, urge the Commission not to adopt fixed percentages and fixed dates for the captioning of previously broadcast programming. Alternatively, if the Commission does adopt such fixed standards, GSN would urge the Commission to set the threshold at 25 percent of programming over 16 years, and to exempt programmers that rely on library programming for more than 50 percent of their programming schedules. Second, with regard to the captioning of new programming, GSN would urge the Commission to exempt interactive game shows that make use of a substantially full-screen virtual environment or comparable game board or require viewer/player speed in order to participate. Third, GSN would urge the Commission to consider program format and the complexity of closed captioning a particular program when determining whether to grant an "undue burden" exemption to a particular petitioner under these regulations.

Respectfully submitted,

The Game Show Network, L.P.

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Dated: February 28, 1997
DCI-276548.V1